

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO.1166 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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STATE OF GUJARAT

Versus

HARGOVINDBHAI PRABHUDAS PANCHAL & ANOTHER

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Appearance:

PUBLIC PROSECUTOR for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:30-04-1998

C.A.V JUDGEMENT (Per: R.P.Dholakia,J.)

Being aggrieved with the order of acquittal recorded by the learned Special Judge, Ahmedabad (Rural), Mirzapur in Special Case No.9 of 1993 on 18-9-1997, the State has preferred this appeal. The respondents-accused were tried for the offences punishable under Secs.323, 324, 504, 506(2) read with 114 of Indian Penal Code and Secs.110 and 117 of Bombay Police Act and also under Sec.3(i)(x) of the Scheduled Castes & Scheduled Tribe (Prevention of Atrocities) Act.

#. It is the prosecution case that the complainant and the present respondents-accused were serving as Teachers in the Primary School at Village Ukdol, Taluka Viramgam, District Ahmedabad. On 17-11-1992 at about 11.30 a.m., there were exchange of words between the complainant and the present respondents. Accused gave kick blow and more particularly accused No.2 gave knife blow to the complainant as a result of which, complainant received injury on his thumb. Accused have threatened him that he will be killed and spoken some words which were humiliating him and his community. Thereafter, complainant gave one written application to Viramgam Police Station which was not accepted by the Police Officer. Then, he informed the D.S.P. (Ahmedabad Rural) to that effect telephonically and Police has recorded his complaint on 18-11-1992. Offence was registered, panchnama was got prepared and after collecting the medical certificate, Police has submitted the charge-sheet and charge was framed against the accused by the learned Special Judge. Accused pleaded not guilty and claimed to be tried. The learned Special Judge, on appreciation of evidence and after hearing the learned advocates appearing for the respective parties, acquitted the accused.

#. We heard learned Addl. Public Prosecutor, who, on going through the record and proceedings, has argued that learned Special Judge ought to have believed the say of the complainant, his wife and daughter and merely they are nearest relatives, their evidence should not be discarded. He has further argued that the oral evidence of Gomptiben Gandabhai is believable and prosecution evidence gets support from the injury certificate exh.33 and the oral evidence of doctor.

#. We have gone through the judgment and evidence shown by the prosecution and it appears that, the oral evidence of complainant is full of contradictions and omissions. In the wireless message (exh.40), the complainant has named accused No.1 alongwith six other teachers, but it is seen that except three teachers, others were on leave. The complainant has admitted in his cross-examination that there were fifteen other persons from the village, but none has been examined by the prosecution. Witness Gomptiben Gandabhai has not supported the prosecution on material point. No satisfactory explanation is putforward for late filing of complaint. On going through the panchnama of scene of offence, there is no mention of bloodstain at the scene of offence or on the muddamal knife. It appears that,

there was previous enmity between the complainant and present respondents. Presence of complainant's wife and daughter at the place of offence is also creating doubt. Hence, the benefit of doubt accrues to the accused. We are of the view that learned Special Judge has rightly come to the conclusion in acquitting the present respondents-accused.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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